

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments implement the Iowa Electronic Health Record Incentive Program, as authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Act provides incentive payments for the adoption, upgrade, and meaningful use of certified electronic health record (EHR) technology. The federal government has issued standards and certification criteria for electronic health records. To qualify, an electronic record of health-related information about an individual must:

- Include patient demographic and clinical health information, such as medical history and problems lists; and
- Have the capacity to provide clinical decision support, support physician order entry, capture and query information relevant to health care quality, and exchange electronic health information with other sources and integrate information from other sources.

To encourage health care providers to implement such technology, federal legislation authorizes incentive payments to Medicare and Medicaid providers. To qualify to issue incentives to Medicaid providers, a state must submit to the Centers for Medicare and Medicaid Services (CMS):

- An advance planning document for health information technology planning which includes a project management plan, estimated costs, and required planning activities.
- The state’s health information technology plan, including an assessment of state systems; descriptions of how the state will ensure the eligibility of applicants for incentives, monitor and validate provider information, and ensure that incentive payments meet federal requirements; and a description of the provider appeals process.
- An advance planning document for health information technology implementation which includes specific information about personnel, activities, methods, and costs identified through the development of the state health information technology plan.

After CMS approval of these documents, a state may issue incentive payments to the following types of Medicaid-enrolled providers:

- Physicians, dentists, certified nurse midwives, nurse practitioners, and certain physician assistants if Medicaid members (or “needy individuals” for a provider practicing predominantly in a federally qualified health center or rural health clinic) comprise at least 30 percent of the provider’s patient volume. The threshold is 20 percent Medicaid patients for pediatricians.
- Acute care hospitals that have 10 percent of their patient volume in Medicaid members; and
- Children’s hospitals (with no Medicaid patient threshold).

CMS has set the maximum net allowable costs for electronic records implementation for an eligible professional at \$25,000 for the first year of implementation, with the maximum incentive payment at 85 percent of this threshold, or \$21,250. The other 15 percent of the cost is the responsibility of the provider. For subsequent payment years, the allowable cost threshold is \$10,000, with a maximum incentive payment of \$8,500 per year. A provider may participate in the incentive program for a maximum of six years.

For a hospital, the incentive payments will be calculated in relation to a theoretical overall amount starting from a base amount of \$2 million per year for four years with adjustments based on the size of the facility, a transition factor that is reduced for each of the four years, and the Medicaid share of the hospital’s charges for that year. A hospital may participate in the incentive program for a minimum of three years and a maximum of six years.

Providers may apply for payments when they meet the reporting requirement in the year for which they are applying. For eligible professionals, the reporting period and payment year is the calendar year. For hospitals, the reporting period and payment year is the federal fiscal year.

After the first year of incentive payment, the hospital or professional must demonstrate that the technology implemented meets federal performance criteria for “meaningful use.” The federal regulation contains Stage 1 requirements. Higher Stage 2 and Stage 3 thresholds for meaningful use of technology will be introduced in later rule making.

Mandatory objectives in Stage 1 include computerized provider order entry; drug-drug and drug-allergy checks; problem, medication, and allergy lists; records of patient demographic information, vital signs, and smoking status; electronic reporting of clinical quality measures to the state; and provision of electronic copies of patient health information on request. The hospital or professional must also meet five of ten additional objectives, such as drug formulary checks, incorporation of clinical laboratory test results, lists of patients with specific conditions for quality improvement or outreach, and discharge summaries for transition to another provider or setting of care.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments November 10, 2010.

The Department finds that notice and public participation are unnecessary because the policies for this program are set by federal law and regulation. The Department has very little flexibility. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department finds that these amendments confer a benefit on providers by underwriting the costs of adopting electronic health records. Adoption of electronic records is essential to support the goals of improving patient care while containing costs of health care delivery. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective January 1, 2011.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of “Aggrieved person,” numbered paragraph “7,” as follows:

7. For providers, a person or entity:

- Whose license, certification, registration, approval, or accreditation has been denied or revoked or has not been acted on in a timely manner.
- Whose claim for payment or request for prior authorization of payment has been denied in whole or in part and who states that the denial was not made according to department policy. Providers of Medicaid services must accept reimbursement based on the department’s methodology.
- Whose contract as a Medicaid patient manager has been terminated.
- Who has been subject to the withholding of a payment to recover a prior overpayment or who has received an order to repay an overpayment pursuant to 441—subrule 79.4(7).
- Who has been notified that the managed care reconsideration process has been exhausted and who remains dissatisfied with the outcome.
- Whose application for child care quality rating has not been acted upon in a timely fashion, who disagrees with the department’s quality rating decision, or whose certificate of quality rating has been revoked.
- Who has been subject to an adverse action related to the Iowa electronic health record incentive program pursuant to rule 441—79.16(249A).

ITEM 2. Adopt the following **new** rule 441—79.16(249A):

441—79.16(249A) Electronic health record incentive program. The department has elected to participate in the electronic health record (EHR) incentive program authorized under Section 4201 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law No. 111-5. The electronic health record incentive program provides incentive payments to eligible hospitals and professionals participating in the Iowa Medicaid program that adopt and successfully demonstrate meaningful use of certified electronic health record technology.

79.16(1) State elections. In addition to the statutory provisions in Section 4201 of the ARRA, the electronic health record incentive program is governed by federal regulations at 42 CFR Part 495 as published in the Federal Register, Vol. 75, No. 144, on July 28, 2010. In compliance with the requirements of federal law, the department establishes the following state options under the Iowa electronic health record incentive program:

a. For purposes of the term “hospital-based eligible professional (EP)” as set forth in 42 CFR Section 495.4 as amended to July 28, 2010, the department elects the calendar year preceding the payment year as the period used to calculate whether or not an eligible professional is “hospital-based” for purposes of the regulation.

b. For purposes of calculating patient volume as required by 42 CFR Section 495.306 as amended to July 28, 2010, eligible providers may elect to use either:

- (1) The methodology found in 42 CFR Section 495.306(c) as amended to July 28, 2010, or
- (2) The methodology found in 42 CFR Section 495.306(d) as amended to July 28, 2010.

c. For purposes of 42 CFR Section 495.310(g)(1)(i)(B) as amended to July 28, 2010, the “12-month period selected by the state” shall mean the state fiscal year.

79.16(2) Eligible providers. To be deemed an “eligible provider” for the electronic health record incentive program, a provider must satisfy the following criteria:

a. The provider must be currently enrolled as an Iowa Medicaid provider.

b. The provider must be one of the following:

(1) An eligible professional, listed as:

1. A physician,
2. A dentist,
3. A certified nurse midwife,
4. A nurse practitioner, or
5. A physician assistant practicing in a federally qualified health center or a rural health clinic when the physician assistant is the primary provider, clinical or medical director, or owner of the site.

(2) An acute care hospital, defined as a health care facility where the average length of stay is 25 days or fewer, which has a CMS certification number with the last four digits in the series 0001-0879 or 1300-1399.

(3) A children’s hospital, defined as a separately certified children’s hospital, either freestanding or a hospital-within-hospital, that predominately treats individuals under 21 years of age and has a CMS certification number with the last four digits in the series 3300-3399.

c. For the year for which the provider is applying for an incentive payment:

(1) An acute care hospital must have 10 percent Medicaid patient volume.

(2) An eligible professional must have at least 30 percent of the professional’s patient volume covered by Medicaid, except that:

1. A pediatrician must have at least 20 percent Medicaid patient volume.

2. When a professional has at least 50 percent of patient encounters in a federally qualified health center or rural health clinic, patients who were furnished services either at no cost or at a reduced cost based on a sliding scale or ability to pay, patients covered by the HAWK-I program, and Medicaid members may be counted to meet the 30 percent threshold.

79.16(3) Application and agreement. Any eligible provider who wants to participate in the Iowa electronic health record incentive program must declare the intent to participate by registering with the National Level Repository, as developed by the Centers for Medicare and Medicaid Services (CMS). CMS will notify the department of an eligible provider’s application for the incentive payment.

a. Upon receipt of an application for participation in the program, the department will contact the applicant with instructions for accessing the EHR incentive payment program section of the Iowa Medicaid portal access (IMPA) Web site at <https://secureapp.dhs.state.ia.us/impapa/>. The applicant shall use the Web site to:

(1) Attest to the applicant’s qualifications to receive the incentive payment, and

(2) Digitally sign Form 470-4976, Iowa Electronic Health Record Incentive Program Provider Agreement.

b. For the second year of participation, the eligible provider must submit meaningful use and clinical quality measures to the department, either through attestation or electronically as required by the department.

c. The department shall verify the applicant's eligibility, including patient volume and practice type, and the applicant's use of certified electronic health record technology.

79.16(4) Payment. The department shall issue the incentive payment only after confirming that all eligibility and performance criteria have been satisfied. Payments will be processed and paid to the tax identification number designated by the applicant. The department will communicate the payment or denial of payment to the National Level Repository.

a. The primary communication channel from the department to the provider will be the IMPA Web site. If the department finds that the applicant is ineligible or has failed to achieve the criteria necessary for the payment, the department shall notify the provider through the Web site. Providers shall access the Web site to determine the status of their payment, including whether the department denied payment and the reason for the denial.

b. Providers must retain records supporting their eligibility for the incentive payment for a minimum of six years. The department will select providers for audit after issuance of an incentive payment. Incentive recipients shall cooperate with the department by providing proof of:

- (1) Eligibility,
- (2) Purchase of certified electronic health record technology, and
- (3) Meaningful use of electronic health record technology.

79.16(5) Administrative appeal. Any eligible provider or any provider that claims to be an eligible provider and who has been subject to an adverse action related to the Iowa electronic health record incentive program may seek review of the department's action pursuant to 441—Chapter 7. Appealable issues include:

- a. Provider eligibility determination.
- b. Incentive payments.
- c. Demonstration of adopting, implementing, upgrading and meaningful use of technology.

This rule is intended to implement Iowa Code section 249A.4 and Public Law No. 111-5.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/10.